



POLICE DEPARTMENT

March 19, 2009

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Christopher Nielsen
Tax Registry 915153
Housing Borough Brooklyn
Disciplinary Case No. 83941/08

The above-named member of the Department appeared before me on March 2, 3 and 4, 2009, charged with the following:

1. Said Sergeant Christopher Nielsen, assigned to Housing Borough Brooklyn, on or about and between February 1, 2007 and November 7, 2007, did steal property and the value of property exceeded fifty thousand dollars.

PG 203-10 – Page 1, Paragraph 5—GENERAL REGULATIONS
NEW YORK STATE PENAL LAW §155.40(1)—GRAND LARCENY IN THE
SECOND DEGREE

2. Said Sergeant Christopher Nielsen, assigned to Housing Borough Brooklyn, on or about and between February 1, 2007 and November 7, 2007, did knowingly possess stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof, and when the value of the property exceeded fifty thousand dollars.

PG 203-10 – Page 1, Paragraph 5—GENERAL REGULATIONS
NEW YORK STATE PENAL LAW §165.52—CRIMINAL POSSESSION OF
STOLEN PROPERTY

3. Said Sergeant Christopher Nielsen, assigned to Housing Borough Brooklyn, on or about and between February 1, 2007 and November 7, 2007, on approximately 165 occasions, within the confines of Richmond County, with knowledge it was forged and with intent to defraud, deceive or injure another, did utter or possess any forged instrument. (*As Amended*)

PG 203-10 – Page 1, Paragraph 5—GENERAL REGULATIONS
NEW YORK STATE PENAL LAW §170.25—CRIMINAL POSSESSION OF A
FORGED INSTRUMENT IN THE
SECOND DEGREE

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4. Said Sergeant Christopher Nielsen, assigned to Housing Borough Brooklyn, on or about September 3, 2006 through September 3, 2007, did wrongfully engage in off duty employment without permission or authority to do so.

PG 205-40 – Page 1, Paragraph 1—PERSONNEL MATTERS

5. Said Sergeant Christopher Nielsen, assigned to Housing Borough Brooklyn, on or about November 23, 2007, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant did cause false entries to be made in Department records, to wit: on his off-duty employment application said Sergeant indicated that he had no proprietary interest in a business, known to this Department, when in fact he did. (*As Amended*)

PG 203-10 – Page 1, Paragraph 5—GENERAL REGULATIONS

PG 203-05 – Page 1, Paragraph 4—GENERAL REGULATIONS

6. Said Sergeant Christopher Nielsen, assigned to Housing Borough Brooklyn, on or about January 17, 2008, having been directed by New York City Police Captain Eamon Deery to turn over all of said Sergeant's firearms, rifles, and shotguns, did fail and neglect to comply with said order. (*As amended*)

PG 203-03 – Page 1, Paragraph 2—COMPLIANCE WITH ORDERS,
GENERAL REGULATIONS

7. Said Sergeant Christopher Nielsen, assigned to Housing Borough Brooklyn, on or about November 9, 2007, at a location known to the Department, in Richmond County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Sergeant, after receiving electronically communicated evidence relevant to an open criminal investigation, did fail to immediately provide the Department with said electronically communicated evidence, as required. (*As amended*)

PG 203-10 – Page 1, Paragraph 5—PUBLIC CONTACT—PROHIBITED
CONTACT, GENERAL REGULATIONS

8. Said Sergeant Christopher Nielsen, assigned to Housing Borough Brooklyn, while on duty, on or about and between November 9, 2007 and January 17, 2008, did wrongfully and without just cause utilize one or more Department computers to make inquiries unrelated to the official business of the Department or the City of New York, in that he improperly utilized a Department computer to ascertain information about a criminal complaint for his personal use. (*As amended*)

PG 219-14 – Page 1, Paragraph 2—DEPARTMENT COMPUTER SYSTEMS
DEPARTMENT PROPERTY

The Department was represented by Mark Berger, Esq., Department Advocate's Office, and the Respondent was represented by Andrew Quinn, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty of Specification Nos. 1, 2, 3 & 7; and found Guilty of Specification Nos. 4, 5, 6 & 8.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Captain Eamon Deery, Charles Noto, Detective Louis Molina, Lieutenant Robert Sprague and the Respondent. Offered into evidence was a collection of checks made payable to the Respondent, Department's Exhibit ("DX") 1; a copy of an "eBay" e-mail sent to the Respondent from Joseph Weinmeier, DX 2; a copy of a Commerce Bank signature card, DX 3; and a copy of an off-duty employment application, DX 4.

Captain Eamon Deery

Deery testified that he has been a member of the Department for 18 years. He was formerly assigned to the Internal Affairs Bureau ("IAB") and supervised an investigation into the Respondent. He explained that a company named Sage Electric

("Sage") filed a complaint at the 120 Precinct alleging that one of their employees was embezzling money. Specifically, they discovered that checks had been cashed through the Respondent's sports memorabilia business. Accordingly, an investigation was launched to determine the Respondent's involvement in receiving the checks from Sage. A search warrant was obtained for the Respondent's business premises. The Respondent consented to search his residence by IAB. Deery noted that he was present for the search and that it occurred on January 17, 2008.

Deery explained the details of the search. He indicated that he first met the Respondent at his residence, and was provided with business documents. Next, they went to the business and conducted a search. Thereafter, the Respondent was placed on modified duty status. Deery said that he asked the Respondent for his shield, identification card and "all firearms, rifles and shotguns." He said that the Respondent failed to comply with his order to surrender his firearms, rifles and shotguns.

On May 20, 2008, Deery testified that he received a telephone call that the Respondent had "told somebody that he was contemplating suicide and that he had a shotgun in his possession." The Respondent was the owner of this weapon. Deery then stated that he was unsure if it was a rifle or a shotgun, but knew that it was not a handgun. He was unable to say "with one hundred percent certainty" that he ordered the Respondent to surrender all firearms, rifles and shotguns, but noted that doing so was "protocol" and that he was "99 percent sure" that he would have done so. Upon inquiry by the Court, Deery indicated that police officers were sent to the Respondent's residence to retrieve the shotgun from the Respondent.

On cross-examination, Deery said that he was at the Respondent's business when he ordered him to surrender the weapons. He was unable to recall the specific wording that he used when he gave the Respondent this directive. He reiterated that he believed that he requested rifles and shotguns in addition to "guns" but was not certain. He was "98, 99 percent sure" that he did request that any rifles or shotguns be surrendered. He did not review the Respondent's "ten card."¹ He did not check this document to see if any rifles or shotguns were listed on it. Nor was he aware of what weapons the Respondent possessed on the day that the search warrant was executed. When the Respondent was modified, Deery said "the detective and lieutenant" who took the weapons from him later verified what weapons he possessed, and added that he did not believe rifles and shotguns were listed on a "ten card." He was "98 to 99 percent sure" that he asked the Respondent if he possessed any rifles or shotguns. The Respondent surrendered a service weapon and possibly an off-duty weapon. Deery testified that when he ordered the Respondent to surrender the weapons, the borough commanding officer of Manhattan IAB, Deputy Inspector Mavricos, was present, along with Detective Molina, the case investigator. He was unaware of anyone taking notes pertaining to the order.

In his tenure at IAB, Deery acknowledged that he has had occasion to modify members of the Department. He said that when he does so, he observes the individual's appearance and demeanor. Upon modifying the Respondent, he said that he seemed "a little distraught" but pointed out that he did not know how he felt. He said that the Respondent was compliant and cooperative during the process. When asked again, if he

¹ The witness explained that this is an index sized card, documenting information such as residence and firearms that are owned.

asked the Respondent for his “weapons” or “firearms, rifles and shotguns,” Deery reiterated that he was “98 to 99 percent sure” that it was the latter. He conceded that there was a “one or two percent” chance that he asked for “weapons” instead. At least one of the weapons surrendered by the Respondent was issued by the Department.

Deery testified that the Respondent’s business is called CNL Sports Memorabilia (“CNL”). He was unsure of the location of the business and reiterated that IAB met the Respondent at his residence before proceeding to the business. Despite having a warrant and having authorization to enter the business without the Respondent, Deery said that they wanted the Respondent to accompany them to see if he would cooperate and identify the relevant records to IAB. He believed that someone from IAB went to the business prior to the search and explained that on the day of the search, there were two teams—one at the business location, and the other at the Respondent’s home. Deery was not at the Respondent’s home and was notified upon his arrival. After arriving at the Respondent’s home, Deery said that he spoke with him and advised him of the search warrant. The Respondent then volunteered that he kept the business records at his home and provided the IAB personnel with these records. He was unsure if these records included an e-mail from Joseph Weinmeier but agreed that numerous documents were turned over. He did not recall if the Respondent informed him that there was a minimal amount of records kept at his store.

Deery believed that he told the Respondent about the purpose of his investigation and the search warrant and that it involved the activities of Weinmeier. He also believed that he told the Respondent that he would not be questioned under the provisions of Patrol Guide 206-13. He agreed that, notwithstanding this, the Respondent wanted to

speak with the District Attorney. After reviewing a worksheet to refresh his recollection, Deery agreed that the Respondent insisted on speaking to the District Attorney. In response to the Court, Deery testified that he did not recall this and said that the Respondent was probably dealing with the detective who recorded this on the worksheet.

Regarding the paperwork that the Respondent provided IAB personnel, Deery said that he could not recall exactly what was turned over to them but knew that the documents were provided to the Richmond County District Attorney's Office ("DA").

Both the Respondent and his wife were present when Deery was at the residence. He recalled that the Respondent's wife was assisting in identifying documents in the house and that one item provided was a laptop computer. The laptop was turned over because it contained records for CNL. Deery was unable to recall what the Respondent's wife was attempting to show, and noted that she was dealing with Molina, the case investigator. Group 7 of IAB, a technical group, handled the computer aspect of the investigation. Deery agreed that the Respondent's wife was very cooperative.

In addition to receiving the laptop, baseball and football cards were provided. The Respondent indicated that these cards, 49 football cards and 55 baseball cards, were purchased on behalf of Weinmeier but had not yet been picked up by him. The cards were purchased with "stolen money."

After providing materials to the Richmond County DA, a meeting was held with IAB and the DA to determine what should be done with the Respondent. Ultimately, the DA decided that the Respondent should be charged with grand larceny. This was not a determination made by the Department.

Deery agreed that during an Official Department Interview with the former commanding officer of the 120 Precinct Detective Squad, Lieutenant Sprague, he said that he believed that the Respondent was a victim and had no criminal liability. After reviewing a worksheet of an Official Department Interview of Detective Andrew Carroll of the 120 Precinct Detective Squad, Deery agreed that he too believed that the Respondent was a victim for receiving stolen checks. Deery testified that it was Assistant District Attorney Curale from the Richmond County DA who determined that the Respondent should be arrested.

During the investigation of the Respondent, an audit was conducted of his bank account. Deery did not participate in this. After reviewing a document, RX A, pertaining to the audit, Deery agreed that the Respondent and his wife deposited about \$122,000 in salary from their employers and an additional \$415,000 in additional deposits. Deery identified a photograph, RX B, as a photo of the storefront of CNL.

With respect to the investigation of Weinmeier, Deery was not involved, and it was conducted by the 120 Precinct Detective Squad. He believed the investigating officer in that case may have been Carroll, and noted that it was a separate case from the investigation of the Respondent. Deery was unsure if any relationship was ever established between the Respondent and Weinmeier and did not know if anyone investigated this possibility. After reviewing a worksheet, Deery agreed that a public records check was conducted to ascertain if the two were linked, but he did not consider this check to be an "all inclusive" determination that there was no relationship. He admitted that the investigation never revealed a relationship other than "customer and client" between Weinmeier and the Respondent.

Deery was unsure if the Respondent ever spoke with the DA. He said that he would not have been involved in determining if the Respondent would be permitted to speak to the DA. Deery also agreed that the Respondent never said that he knew that the checks received from Weinmeier were unauthorized. He was unsure if the Respondent said that he had "no idea" the checks were not authorized.

Charles Noto

Noto testified that he is the president of an electrical contracting firm, Sage Electrical Contracting, in Staten Island. His company performs work in high rise buildings, offices, condos and apartments. He owns 50 percent of the business, along with his partner, Jerry Sarabella, who also owns 50 percent. The business has never been involved in the collection of sports memorabilia.

Noto said that Sage employed a woman named Carol Costa for about 17 years. She was terminated from her position in August of 2008 for embezzling funds from the company, an approximate amount of \$1.1 million. She was not a partner in the firm. While she had no official title, her duties were to answer telephone calls and handle accounting matters. Noto said that Costa was receiving checks under "Carol Costa" and was supposed to be issued a 1099². This never occurred.

In describing the layout of his office, Noto said that there are a total of four enclosed offices. Costa's was adjacent to Noto's, and he said that he frequently went into her office. Noto said that occasionally, Costa would call him when he was out in the field for permission to sign Sage checks for miscellaneous bills. He would grant her permission to sign his name for this purpose, but noted that she was "absolutely not"

² A reference to Internal Revenue Service Form-1099, used to report payment to independent contractors.

authorized to allow the purchase of sports memorabilia or baseball cards on behalf of Sage.

Noto said that Weinmeier was employed by Sage from 2005 to November of 2007. His employment was also terminated for embezzling money. In explaining the circumstances of Weinmeier's termination, Noto testified that he went to work on Election Day in November of 2007 in order to do job costing. Noto said that while reviewing assorted documents, he came across "lots of checks...expense checks" payable to Weinmeier for \$250. He found this bizarre and found several more checks made out to Weinmeier. Noto reported his findings to Sarabella and the two reviewed boxes of cancelled checks and discovered checks payable to the Respondent. Noto said that neither he nor Sarabella knew who the Respondent was at the time. They had no animus towards the Respondent and said that it was "just a name on a check."

Noto and Sarabella had a meeting. They decided to confront Weinmeier with their findings. Noto had a meeting to attend, so Sarabella confronted Weinmeier. Noto said that when Sarabella asked why he did what he did, Weinmeier said "...sometimes you have to do certain things." When asked about the checks payable to the Respondent, Weinmeier said, "...I had no choice but to write those checks out."

In reviewing DX 1, the collection of Sage checks, Noto acknowledged that he previously reviewed them. Asked to look at the signature of any check in the packet, Noto testified that one "[s]upposedly looks like it says Charles Noto" but pointed out that he did not sign any of the checks. He noted that some of the checks had scribbled signatures, pointing out that a November 25 check was illegible. Noto testified that he

does not know anyone by the name of Christopher Nielsen, and could not identify anyone in the courtroom as having that name.

Noto testified that he never employed anyone named Christopher Nielsen. He was asked to examine a check in the DX 1 exhibit dated September 24, 2007, check number 1333. He indicated that this check was a payroll check payable to Nielsen, a person who was never employed by Sage. Noto said that his company would not have paid a person who was not employed by his company with a payroll check. He noted that all of the checks in DX 1 were cashed, presumably by Nielsen. In examining the endorsement section on the rear of the checks, Noto said the checks appeared to say "Christopher Nielsen."

Sage never conducted any business with the Respondent, nor did they purchase any sports memorabilia from him. Noto said no such products were received by his company and he was "sure" that he would have known about it if they did.

Noto testified that Sarabella went to the 122 Precinct to report the issues with the checks. He also testified before a Grand Jury against Weinmeier in the summer of 2008. Noto testified that the information that his company provided to law enforcement resulted in the arrest of Weinmeier. At the time of this proceeding, Sage has not recovered any of the stolen funds. He was not familiar with an individual named Jeremy Noelle.

On cross-examination, Noto testified that six to seven people work inside in the office, located at 651 Willowbrook Road. The office has been at this location since 1997 or 1998. Noto was shown a series of photographs of his office, RX C, and testified as to what they were. He said the photo on the first page was of the front of the office building. The next page showed a photo of the "entranceway directory" which listed

“Sage Electrical, Colt Electrical, room 201.” There are no names of employees on this directory and Noto said there has never been. He indicated that the photographs represented what the directory looked like in November of 2007. The following page showed the exterior of 651 Willowbrook, and the next page contained pictures of “the open office areas.” Noto said that the office appeared the same in November of 2007 as it did in the photographs. He reiterated that there are four enclosed offices which include his, Sarabella’s, a conference room, and an additional office. One of these offices was formerly used by Costa. There are no names or titles on the doors, nor was there in November of 2007.

Weinmeier sat at the “front reception desk” and performed reception duties in addition to being a “graduate accountant.” Noto explained that Costa did not have accounting credentials, and so, when Sage’s business grew they sought a more qualified person to handle the accounting matters and Weinmeier was hired. Both Costa and Weinmeier were responsible for answering incoming calls, and did so usually with a greeting “Sage Electrical, good morning...Sage Electrical, good afternoon.” Most of the time, however, Weinmeier answered the phone unless the phones were “very, very busy.”

Noto examined the photographs again. He testified that on the last page, there is a photograph of the “corridor leading to the back open space area and shows file cabinets....” Noto said that his office was to the left of the file cabinets, and noted that there was a picture of Sarabella looking into his office with an additional person that he did not know. The last photograph showed a picture of a “drafting or engineering” room. The conference room is past the reception area. He agreed that the photographs are representative of the layout of the office in November of 2007. He reiterated that there

were no nameplates or insignias on doors indicating the function of a particular employee at Sage.

On further questioning about Costa, Noto said that she did not have a formal title and he did not believe that she had business cards. Her responsibilities differed before and after Sage hired Weinmeier. Prior to Weinmeier, Noto said that Costa handled payables and receivables, correspondence, proposals, quotes, pricing and answered the telephones. Noto said that he learned of Costa's embezzlement after Weinmeier was fired in November of 2007, when Sage hired a new accountant named Natalie Dodin in December of the same year. He also noted that he received a call from an accountant from the firm that oversees Sage's taxes informing him that money was drawn from a Citibank line of credit, something that was not approved. Additionally, statements pertaining to this line of credit had been altered.

Noto reiterated the timeline of events. On Election Day in November of 2007, he discovered unauthorized checks written to Weinmeier. He found additional checks payable to Weinmeier and also for the Respondent. Weinmeier was confronted the following day and terminated. A month and a half later, Noto learned that a Citibank line of credit document had been altered. At this point, Dodin had already been hired and was tasked with gathering all cancelled checks from the bank. By this time, Sarabella had already contacted the police. More checks were found, resulting in an overall loss of about \$1.8 million to Sage.

Some of the checks had been made payable to Weinmeier's wife, but Noto did not recall the dates of them. As to the amount, out of the total \$1.8 million, Noto figured that the Respondent received \$345,000, Costa received \$1.1 million, and the remaining

\$700,000 or so was attributed to Weinmeier. He agreed that \$350,000 was made payable to Weinmeier's wife, his wife's parents or to Sarabella or Noto himself. With respect to check number 4872 in DX 1, Noto said that it was made payable to him but that his signature was not on the front or the back of the check. He said that it appeared as if this check was cashed for \$1,500, but he did not receive the money nor did he sign the check. He was not familiar with a check cashing establishment named "DDA Check Cashing" and said that he does not know where Weinmeier went to cash this check. Noto was unsure of how many checks Weinmeier made payable to him, but noted that many of them were cashed at a Citibank on Victory Boulevard.

Noto said that he later learned that Weinmeier and Costa were altering records, including monthly bank statements and check ledgers that were being provided to the accountant. This was done to conceal the thefts. Noto was not aware if Weinmeier opened an American Express account under Sage, but learned that he leased his wife a Lexus using Sage's funds. Noto admitted that Weinmeier was successful at deceiving and stealing from him for a period of time.

Noto knew that Weinmeier collected baseball memorabilia. He said that he would occasionally see him with cards and hear him talking about them. He never asked Weinmeier where the cards came from or how he paid for them. Nor did Weinmeier ever remark that they were a good way of investing, or discuss the value of cards, aside from occasionally talking about minor league cards over lunch.

Noto said that Costa's arrest is impending, in addition to other people. He also subsequently learned that she used a false social security number during her employment with Sage. He explained that he learned that Costa was not preparing a 1099 for herself

and was also collecting disability while working. She had an additional social security number under the name "Carol LaRossa." Noto did not learn of this until this matter came to light. Noto reiterated that there were limited instances where Costa was given permission to sign Noto's names on checks, and he said he would later examine the check for accuracy. He noted that only he and his partner, Sarabella, are authorized to sign Sage's checks, but he signs the majority of the business' checks. As to the checks assembled in DX 1, Noto said none of them resemble his signature.

Noto and Sage's new accountant later determined that all of the checks that were written to the Respondent cleared. All of the checks that were forged by Weinmeier also cleared. None of the checks ever "bounced" or were returned. Noto said that it was not his practice to "pre-sign" checks and give them to Costa or Weinmeier to fill in at a later point.

Noto testified that the company's payroll is done via a "computer service" which generates reports about what benefits have to be paid by the employee's union. Each Sage employee receives one payroll check per week. Weinmeier, who was also part of the union's administrative part, caused "double checks" to be issued to his name. The duplicate check was not entered in the computer so as to avoid being detected as a double check. In essence, there were instances where Weinmeier was being paid twice.

Regarding the checks payable to the Respondent, Noto said that he never told him that the checks were fraudulent because he did not know who he was. He indicated that the checks in DX 1 are actual Sage checks, which had been produced by the bank.

Noto reiterated that Weinmeier told Sarabella that he had "no choice" but to make the checks out to the Respondent. He then reaffirmed that it was discovered that checks

were also made out to Weinmeier's wife and her parents. Further, he agreed that checks were made out to Noto himself as well as to Sarabella, and cashed by Weinmeier. Noto acknowledged that he was not there when Weinmeier made the statement to Sarabella and that he did not know what Weinmeier was referring to and that he had no idea what the statement meant. He was unsure if Weinmeier's embezzlement was prompted by gambling debts or drug addiction but agreed that Costa and Weinmeier were greedy.

On continued questioning about the signatures on the checks included in DX 1, Noto said some of them appeared to be "Charles Noto" while others looked "like circles." He did not believe the signatures looked like Costa's as he is familiar with how she signs her name. Noto indicated that Costa did not have authorization to sign Sage checks in her name. Weinmeier was never authorized to sign any checks.

Noto testified that he never purchased season tickets to playoff games for the New York Mets baseball team in 2007 or 2008. He noted that he later learned that Costa had forged either his or Sarabella's name in order to get Mets tickets and had Sage billed for them. He was unsure if Costa later sold the tickets for profit. Noto indicated that Sage had tickets for the New York Yankees, but not the Mets.

Upon examination by the Court, Noto indicated that he has never seen the Respondent before.

On questioning by counsel for the Respondent, Noto said that he is in his office "almost every day" but his schedule varies. Both Weinmeier and Costa were aware of his daily schedule because he would tell them, and they would be aware of when he would be in the office.

Detective Louis Molina

Molina has been a member of the Department for nine years. He identified the Respondent seated in the courtroom as Christopher Nielsen.

He testified that in December of 2007, he was assigned to IAB and investigated an allegation that the Respondent was involved with Weinmeier in embezzling money from Sage. Accordingly, he conducted a background investigation of the Respondent and Weinmeier and determined how much money was stolen from Sage.

During his investigation, Molina learned that the Respondent was involved in off-duty employment. Specifically, he found that in 2005 the Respondent had been authorized to work off-duty for CNL Sports Cards and Memorabilia ("CNL"). In 2006, he did not request authorization and in 2007, he filed an application requesting authorization for the same company. This application was denied.

When presented with DX 3, Molina identified it as a bank signature card for CNL. He said that the card listed Lisa Vento as the President and the Respondent as the Vice President. This signature card was dated October 19, 2005. In examining DX 4, Molina identified it as a November 23, 2007 off-duty employment application for the Respondent. Molina testified that the Respondent was not authorized to work off-duty from September of 2006 through November 23, 2007 but he did so anyway. There was no application on file for this time period. Molina said that he knew that the Respondent was performing off-duty employment during this period because his investigation revealed transactions made by CNL for merchandise. Molina noted that the Respondent indicated on DX 4 that he did not have a proprietary interest in CNL, something that his investigation revealed to be false. Molina said that the Respondent was listed as the

company's vice president in banking records. He also found that the business had a transaction history of selling merchandise for the period that the Respondent was not authorized to be working off-duty. Checks had also been made payable to the Respondent from Sage for merchandise, ostensibly from CNL.

Eventually, a search warrant was obtained for the location of CNL in order to obtain business records "that proved or showed that there was merchandise...sold by [the Respondent] to [Weinmeier]." Specifically, IAB was seeking purchase orders or receipts. Molina said that no such records were ever found, only a "purchase order for the grading of the sports cards." In detailing the specifics of the search of CNL, Molina testified that it occurred on January 17, 2008. One team of IAB personnel "set up" at CNL, and another team stationed themselves at the Respondent's residence. Molina was waiting at the latter location and met the Respondent as he returned home. The Respondent was informed about the warrant at CNL and that a warrant would also be sought for his residence if any business records were located there. The Respondent gave consent to search his residence and provided IAB with a pre-prepared assemblage of documents contained in a plastic bag. Molina opined that the Respondent seemed to be anticipating their arrival. He said that both the Respondent and his wife were "very cooperative" and allowed access to whatever was needed. The Respondent's wife provided her laptop as well, but this did not yield anything substantive. No receipts were provided for anything sold by the Respondent to Weinmeier.

Molina examined DX 2 and said it was a "printout of the screen from an eBay website...a message board." He said it represented a communication from Weinmeier via his eBay account "JNA Specialty" to an eBay account registered to the Respondent's

wife. Molina verified with eBay that the "JNA Specialty" account belonged to Weinmeier. This communication was voluntarily provided to IAB by the Respondent on January 17, 2008, and he made no attempt to conceal it. Molina indicated that the communication was received on November 8, 2007, and printed out on November 9, 2007. IAB did not know of the communication until January 17, 2008. Weinmeier was arrested on November 20, 2007, 12 days after his November 8 e-mail to the Respondent. Molina testified that the Respondent did not provide the detective squad investigating Weinmeier with the e-mail. Molina was not involved in the investigation until December 4, 2007. The Respondent was in contact with Lieutenant Sprague, the commanding officer of the detective unit investigating Weinmeier. He was not provided with the e-mail either.

Molina reiterated that the Respondent and his wife were "very cooperative" during the January 2008 search of their home and claimed that they were willing to assist in the investigation.

On cross-examination, Molina said that the initial complaint which triggered this investigation was filed by Sarabella on behalf of Sage on November 7, 2007. Weinmeier was arrested on November 20, 2007, and surrendered to police with his attorney. The e-mail, DX 2, was sent after the complaint had been filed by Sarabella. Molina indicated that Sarabella went to the 120 Precinct detective squad accompanied by a retired detective and complained that Weinmeier stole company checks and wrote them out to various individuals. The Respondent was identified as being an individual who received a large number of the checks. Molina learned that Sprague then contacted the Respondent regarding the complaint. Molina was present for Sprague's Official

Department Interview. He confirmed that he told the Respondent about the complaint that Sage filed and that he had been identified as a recipient of stolen Sage checks.

Sprague said that this conversation with the Respondent happened on November 8 or 9 of 2007. The DX 2 e-mail is dated November 8, 2007. Sprague was unsure if he notified the Respondent before or after the e-mail. Molina was unsure if the November 8 date on DX 2 meant that the Respondent opened and read the contents of the message on that date. He reiterated that this e-mail was voluntarily provided by the Respondent on January 17, 2008, during the search of his home.

Molina said that he was not sure if anyone in the Department told the Respondent to retain documents related to Sage, and indicated that his involvement in the case started because of the Respondent's involvement in receiving stolen checks. The actual investigation of the stolen checks was conducted by Detective Carroll of the 120 Precinct detective squad. Carroll told IAB that he believed that the Respondent was a victim and found no evidence to suggest that the Respondent committed any crime. IAB conducted an investigation and it was the decision of the Richmond County DA's office that the Respondent should be charged criminally.

During IAB's investigation, it was determined that the Respondent received about \$350,000 in checks from Sage. It was also discovered that the Respondent had two bank accounts—a personal account, and one for CNL. The personal account was a joint checking account shared by the Respondent and his wife and had a Pay Pal account linked to it.

Molina said that he never interviewed Weinmeier, nor did he ever execute a search warrant for his house to see if he had any sports memorabilia purchased from the

Respondent. He was unsure if any Department personnel conducted searches of Weinmeier's residence or office. It is possible that he still possesses items that were purchased with Sage checks from the Respondent. Molina later learned that Weinmeier pleaded guilty but was unsure to what charge he pleaded to; he was not involved in the plea agreement.

In examining the Respondent's personal checking account, Molina noticed a large amount of Pay Pal activity. This investigation was the first instance where he has investigated a case involving purchase and sale of sports memorabilia and he took no steps to learn the manner in which sports memorabilia is bought and sold. Molina learned that the Respondent made over \$200,000 in purchases on his Pay Pal account, all of which applied to sports memorabilia. These records were reflected in the Respondent's bank account activity as Pay Pal deductions. Molina said that the "forensic investigators" that examined the Respondent's wife's laptop found no Pay Pal records contained on it. He was also unable to see what specific items had been purchased, only that withdrawals had been made relating to Pay Pal. In response to the Court, Molina said that there was close to \$200,000 in Pay Pal withdrawals, and he recalled it to be "around 199 thousand something dollars." The transactions only reflected a time period of March of 2007 to November of 2007 and did not encompass anything prior to March of 2007.

Molina testified that a search warrant was obtained for the Respondent's CNL business records. Prior to this, no one had sought any records from the Respondent, and Molina was unaware if anyone from the Respondent's union had made attempts to cooperate with IAB or the Richmond County DA's office. Molina agreed that the search

warrant authorized him to enter CNL without the Respondent's permission but that IAB elected, as a courtesy, to see if the Respondent would willingly unlock the door.

When the Respondent was met at his residence on January 17, 2008, and informed about the warrant and need to obtain his business records, Molina said that he did not appear to be surprised. The Respondent offered information that the majority of the CNL records were kept at his residence and that few documents were actually at CNL. The Respondent voluntarily provided a compilation of records. The Respondent's wife provided password information for the laptop that she voluntarily surrendered to IAB.

Molina agreed that during the search, the Respondent requested to speak with whoever was in charge of the investigation. Mavricos informed him that he was not obligated to speak with anyone and that he should speak with an attorney or his union. When he insisted on speaking with someone, Molina called the DA's office and scheduled an appointment for the Respondent the following day. The Respondent also told IAB that all of the money that he received from Sage was used to purchase sports memorabilia, and that the merchandise was returned to Weinmeier. The information that was obtained in the investigation revealed that the Respondent was a very active trader in sports memorabilia, and this was documented in a report.

The meeting that Molina arranged for the Respondent with the DA's office never occurred. Molina said he believed that the Respondent's attorney contacted the DA's office and cancelled the meeting, but he was unsure of the exact reason why the meeting was cancelled.

Molina testified that he never spoke to Weinmeier, nor did he ever receive information suggesting that the Respondent knew that the Sage checks were stolen or unauthorized. He agreed that his investigation showed CNL to have an eBay feedback rating of 99.7%, showing that it is an active trader in sports memorabilia and that it possesses a good record. Molina also agreed that he determined that CNL was a legitimate sports memorabilia company, and there was no evidence to suggest the contrary. He acknowledged that the business existed prior to Weinmeier embezzling from Sage, and that it had been profitable before the first Sage check. Molina's investigation also showed that the Respondent's relationship with Weinmeier was nothing more than a client relationship and that there was no other evidence of a further relationship between the two, or the Respondent's wife.

Regarding the Respondent's off-duty employment, Molina agreed that the Respondent had applied for and received permission from the Department to operate CNL. He later attempted to renew his application but was denied in 2007, after Weinmeier had been arrested. Upon examination by the Court, Molina testified that the Respondent was authorized to work off-duty sometime up until 2006, when the application expired. From that point, to 2007, no application was on file. He said that applications are good for one year and must be renewed annually.

Molina said that no one shared the contents of the Respondent's Official Department Interview with him.

On redirect examination, Molina reiterated that Carroll expressed that he felt that the Respondent was not criminally liable. Molina felt that Carroll's opinion may have changed had he had more information than he had in November of 2007.

On re-cross examination, Molina said that he did not recall what bank the Respondent deposited the Sage checks in. Nor was he aware of a second account belonging to the Respondent being examined for Sage deposits. Molina never found a Citibank account belonging to the Respondent, but when told that his report reflected this fact, he recalled that Sarabella provided checks from Sage that were drawn on a Citibank account. There was no determination that the Respondent had a Citibank account; all of the Sage checks that were written to him went into either his personal or business account.

In response to the Court, Molina said that Carol Costa was an employee of Sage. He did not know what her function was but testified that Weinmeier misused a Sage credit card belonging to Costa in order to have sports cards graded by a third-party company recommended to him by the Respondent.

Lieutenant Robert Sprague

Sprague is currently assigned to the Quartermaster Section. Sprague admitted that he has open charges and specifications relating to the instant matter and that the Assistant Department Advocate assigned to his case is the same Advocate in this matter. He said that no promises were made to him in exchange for his testimony.

In November of 2007, Sprague was the Commanding Officer of the 120 Precinct Detective Squad. His unit received the November 7, 2007 complaint from Sarabella on behalf of Sage regarding an employee, Weinmeier, writing unauthorized checks and buying merchandise from a member of the Department with those checks. Weinmeier

was also writing checks to himself and his brother. An investigation led to Weinmeier's arrest on November 20, 2007.

Sprague testified that after he received Sarabella's complaint, and before Weinmeier's arrest, he contacted the Respondent. He said that he asked the Respondent if he had any knowledge of Weinmeier and told him of Weinmeier's impending arrest for grand larceny. The Respondent told Sprague that "he was out some monies" and Sprague told him that he would probably have to pursue the matter in a civil court. Sprague believed that the Respondent said that he was out about \$8,000. He did not tell the Respondent that Sarabella mentioned his name. Sprague also did not make any notifications to Internal Affairs or his Commanding Officer because he believed that there was no criminality or serious misconduct on the part of the Respondent.

At the time that Sarabella made his complaint, Sprague explained what information he had. He said that "...their employee (Sage's) does have access to writing out the checks, but he is not able to authorize them and that he was buying merchandise from a member of the service and that this member of the service should have known that the checks were fraudulent." Of the paperwork that Sarabella was able to produce, it showed that the Respondent had received about \$40,000 in checks from Sage. Sarabella had not yet completed his auditing to determine the actual amount of money that the Respondent had received, hence the preliminary \$40,000 figure. When Sprague and the Respondent spoke, there was no discussion about the amount of checks that the Respondent received. Sprague said that if he had known that the actual amount received by the Respondent was \$345,000, he would have notified IAB.

Sprague said that he had about half a dozen conversations with the Respondent. The only dollar amount that he ever referred to in a conversation was that he was out "about \$8,000." He portrayed himself as a victim.

When presented with DX 2, Sprague testified that he was shown the document earlier by the Advocate. He claimed that it was the first time he has ever seen it. The Respondent never told him about it. In one conversation with the Respondent, he expressed concern that he still had a box of cards. Sprague told him to hold onto the cards in case the DA's office wanted to speak to him. He also reiterated that he told the Respondent that he would probably have to pursue a civil action against Weinmeier to recover the money that he was out. Sprague said that the aforementioned was all that he counseled the Respondent about. The other remaining phone calls was the Respondent inquiring about the status of the case, but Sprague said that once the case went to the DA's office, he no longer followed it. He noted that he was eventually transferred and had no more contact with the DA's office and informed the Respondent of this. Sprague added that despite the Respondent asking about the case, he was unaware of what was going on with it because Weinmeier "lawyered up. We didn't have a chance to speak to him."

On cross-examination, Sprague acknowledged that he knew the Respondent before November of 2007, as they had become acquainted in the Department. When Sarabella came to the detective squad to make his complaint on November 7, 2007, he learned that Weinmeier had been making checks out to CNL. Sprague said that Sarabella identified the Respondent as "CNL" and noted that they also had with them an SBA³ card with the Respondent's name on it. Sprague testified that he saw Sage checks that were

³ Sergeant's Benevolent Association

made payable to the Respondent, CNL, Weinmeier, and Weinmeier's brother.

Weinmeier's brother was never arrested for receiving stolen checks, and Sprague said that the only arrests that were made were Weinmeier's and the Respondent's.

Sprague reiterated that he contacted the Respondent after Sarabella made the complaint, and believed that the Respondent was a victim for receiving the unauthorized checks. He indicated that he still believes that the Respondent bears no criminal liability. He agreed that his purpose of contacting the Respondent was to authenticate Sarabella's complaint that Weinmeier was issuing checks, something that the Respondent did confirm and never denied. Sprague said that the Respondent did not hesitate and willingly provided information, quickly and rapidly. The Respondent indicated that he had sold baseball cards and sports memorabilia to Weinmeier who paid using Sage checks. When Sprague asked him why he believed Weinmeier had permission to issue those checks, the Respondent said it was his understanding that Weinmeier was authorized to write the checks. These conversations were not documented in any notes, and Sprague based his testimony about them on his memory.

Sprague did not discuss any business records or documents with the Respondent. The Respondent never changed or amended his version of events in his conversations with Sprague and did not ever seem hesitant or reluctant. Nor did the Respondent ever request Sprague contact any investigators on his behalf; he was not using him as an "agent" to communicate back to the Department. He admitted that he told the Respondent that it was a possibility that the DA's office would want to speak with him about the case, and denied that the Respondent ever suggested that he was going to destroy evidence linking him to Weinmeier.

Sprague reiterated that he did not notify IAB because he did not believe that the Respondent did anything wrong. He noted that he still believes this. After arresting Weinmeier about a week and a half after Sarabella's complaint, he was turned over to the DA's office. Between Sarabella's complaint and Weinmeier's arrest, Sprague said that no evidence was found suggesting that the Respondent knew that the Sage checks were unauthorized. Similarly, no evidence was found indicating a relationship more than a client relationship between the Respondent and Weinmeier.

On redirect examination, Sprague testified that if he had learned about DX 2 during his investigation, he would have notified IAB because of "a hint of criminality in here (the e-mail) or misconduct...some sort of collusion here with it."

The Respondent

The Respondent was ordered to take the stand by the Department. The Court inquired as to the Respondent's health before he offered testimony. The Respondent indicated that he was taking medication but that he felt capable of offering testimony.

He testified that he is assigned to PSA 1 Viper 13 and has been a member of the Department for about 14 years. The Respondent said he became interested in sports cards in the late 1990s through the shop at home program on television. He said that he would occasionally go to shows and sell memorabilia online through his first eBay account, WB2K, which preceded the CNL eBay account opened in August of 2006.

The Respondent said that in September of 2005, he opened CNL sports and linked his personal checking account with a Pay Pal account. He elected to link it to his personal account because that was what he had done in the past. Vento incorporated

CNL with the Department of State and the CNL eBay account was not created until a year later. He said that he did not believe there was anything wrong with linking a PayPal account to a personal bank account. He could not recall if Vento had anything to do with his decision to do this and noted that his wife was involved in very few of the business decisions. He explained that in September of 2005, he purchased a store that was going out of business and decided to run it as a sports card store.

Upon opening the store, the Respondent testified that business “wasn’t that bad” because it was around the holidays. Shortly thereafter, business “dipped down.” Despite the fact that the business was not profitable in its first year, the Respondent wanted to continue. He explained that his business had two components—the storefront, and the eBay business. There was more volume with the latter component. During the 2006 holiday season, the business was not very profitable. The Respondent said that Weinmeier first came into the store in 2006, around April or May. He did not begin to present Sage checks until the next year, and came to the store about eight or nine times between his first visit and the time the first Sage check was presented. Weinmeier was the only person the Respondent ever acted as an agent for in buying memorabilia and receiving a commission. The Respondent was not always in the store when Weinmeier came by, but the other employees would tell him when he stopped by and “picked out a set.” These sets of cards were \$400 to \$600.

In February of 2007, Weinmeier told the Respondent that he was “...able to use company funds to purchase sports cards.” He asked Weinmeier if he was sure, and he claimed that Costa, the senior business partner at Sage authorized it. After receiving about three Sage checks, the Respondent claimed that he called Costa. Weinmeier also

said that he was going to be compensated for purchasing the cards; that he would receive a percentage for any increase in the value of the cards in the form of a check from Costa. The Respondent said he was unsure if Weinmeier was receiving the actual cards as compensation. He said that it was his understanding that Costa was writing the checks that Weinmeier was providing him with. The Respondent accepted three checks prior to contacting Costa. In response to the Court's inquiry, the Respondent testified that he called Costa at Sage's office number and she confirmed that Weinmeier was authorized to use the checks to purchase sports memorabilia and cards. He did not obtain anything in writing from Costa.

The Respondent said that he went to Sage's office in March of 2007 to drop off products. He testified that his phone conversation with Costa combined with Weinmeier's representation that he was authorized to use the checks was sufficient enough for him. He believed that Costa answered the phone when he called Sage and said it was the main telephone line of the business, "the 00 number... [e]nding in 00" that he called to speak with her. He admitted that he had no way to verify if it was Costa on the phone. He relied on a representation from who he believed was Costa that Weinmeier had permission to use the checks. The Respondent deposited the Sage checks as he received them and there were never any problems with them. He had no contract with the company and would place bids online or pickup cards from shows and Weinmeier would provide the checks. The Respondent said that he was supposed to receive a 20 percent commission; he claimed this was the industry standard commission. Weinmeier said that he would pay the commission at the conclusion of the business and the Respondent took his word. The Respondent received a \$3,000 commission and it was

stipulated that this is 20% of \$15,000. The Respondent said that he sold Weinmeier a lot more than \$15,000 in goods and ended up adding money to the price of the cards for his commission. He claimed that Weinmeier knew about this.

When Weinmeier would make an order, he would telephone the Respondent. The Respondent would then write down what Weinmeier was seeking. From February to November of 2007, the Respondent believed that he went to Sage to deliver goods about 30 times and only spoke to Costa on a few occasions. The Respondent recalled an Official Department Interview on January 23, 2008. Confronted with a statement that he made at this interview that he spoke to Costa all the time when he went to Sage, he testified that he only spoke to Weinmeier "about the business and stuff like that." The Respondent did not recall Costa ever telling him that he was doing a great job for Joe and said that his wife was probably incorrect when she testified to that.

The Respondent recalled Costa placing an order through Weinmeier for a Derek Jeter minor league autographed jersey. He said that he spent about six to eight weeks looking for it and was unable to locate the item. He noted that it is a rare item and harder to find when autographed. He spoke to Costa in the office and told her that he could not get that particular jersey. She requested a regular home jersey instead. When asked if Weinmeier told him "Fuck her (Costa), let her get her own jersey," the Respondent affirmed that this was said. He did not know why Weinmeier said this. The Respondent said that he was not concerned with this despite the fact that Costa was "bankrolling" the transactions. He never ordered the home jersey for Costa and agreed that while this may have made her unhappy and possibly cause her to stop Weinmeier's business with him,

he said that Costa could have asked for the jersey again had she really wanted it. The Respondent said that he was not going to inform Costa that Weinmeier said "fuck her."

The Respondent resumed the stand the following day and his direct examination continued. The Respondent admitted to the Court that he neglected to take his medication but was okay to answer questions.

The Respondent reiterated that Weinmeier said he was purchasing cards on behalf of Sage and was authorized to do so by Costa. He assumed that Sage would then own the cards. He did not recall previously testifying that he did not know who would own the cards. When informed that during his January 23, 2008 Official Department Interview, he indicated that the cards were for "... [Weinmeier], Carol Costa, Sage Electrical. Whoever it was for," the Respondent recalled this and admitted that he did not know who he was buying the cards for when he made that statement. He reiterated his phone conversation with Costa where she relayed that she was aware that Weinmeier was using company checks to buy cards and the Respondent said that this was good enough for him. He did not ask her what her title was or even if Weinmeier had permission.

The majority of Weinmeier's orders were placed over the phone. The Respondent would make notes to himself. He called on almost a daily basis requesting that certain items be purchased and would specify the amount that he was willing to pay. Weinmeier would generally pay after the Respondent won the auction for the items. He reiterated that he often went to Sage to pickup checks and the amount of checks would vary. It would often be multiple checks, arranged according to the day that the order was placed. In response to the Court, he clarified that the checks were grouped based on a particular set of transactions. The Respondent recalled Weinmeier ordering and winning a bid for a

\$10,000 card; however, no \$10,000 check was ever received. He explained that it was possible that Weinmeier had a balance already with him, and added that he never laid out money for him.

The Respondent acknowledged that on occasion when he would pick up checks, Weinmeier was in possession of blank signed checks. He did not find this odd. He also admitted that he accepted a payroll check when Weinmeier claimed that Sage ran out of regular checks, but told Weinmeier that payroll checks would not be acceptable in the future. The Respondent also admitted to accepting an unsigned check but said that he did not realize it was unsigned at the time he deposited it. He testified that he generally reviewed the checks that he got but not all the time. All of the checks cleared, including the payroll check.

At his Official Department Interview, the Respondent believed that Noto's name was Jeremy Noelle. He explained that he was trying to remember Noto's name at the interview and made an error when he said Jeremy Noelle. He had no business arrangement with Noto and said that he has never met him. Conversely, the Respondent admitted to meeting Sarabella and speaking to him on several occasions. He said that he delivered cards and picked up checks right in front of Sarabella and assumed that he knew what was going on. He reiterated that he "definitely" met Sarabella and told him about the business. During his Official Department Interview, he also confused the Noelle name with Sarabella's, and admitted that he did not clarify it at the interview despite being afforded an opportunity to do so.

The Respondent said he never had receipts where Weinmeier signed for receiving products. He did furnish the Respondent with e-mails and spreadsheets which reflected

whether or not the cards had been received, and the price that was paid for the item. The business arrangement ended upon Weinmeier's arrest at the beginning of November of 2007.

The Respondent testified that he received a call from Sprague inquiring if he was familiar with Weinmeier. Sprague informed him of Weinmeier's arrest and explained that he had been using checks that were not authorized. The Respondent claimed that he told Sprague that he did several hundred thousand dollars worth of business with Weinmeier and also told him about e-mails and phone calls that he received from Weinmeier or his wife. When presented with DX 2, the e-mail, the Respondent said he received it on November 8, 2007. His first conversation with Sprague occurred shortly before receiving the e-mail, and added that Sprague called him a half a dozen times. The Respondent explained that Sprague told him "...keep everything...someone from the squad would get in touch with me." Sprague was not the Respondent's commanding officer, and before the January 17 search of the Respondent's home, he did not provide the e-mail to IAB. He held the e-mail for two and a half months before the Department received it, but reiterated that he was holding it for the investigating officer. The Respondent believed that the e-mail merely expressed that Weinmeier had spent more money than he was allowed to.

The Sage checks contained a memorandum section on the lower left hand corner of the checks. The Respondent said that there was nothing indicated on the checks defining their purpose.

The Respondent testified that Weinmeier answered the phone all the time. When asked if he previously testified that Costa answered all the time, the Respondent said that

she occasionally answered. The Respondent admitted to knowing the structure of a precinct, and acknowledged that a commanding officer would not answer the main telephone. Nor would a commanding officer answer the phone and then inform a subordinate if someone was seeking to speak with them. The Respondent said that he did not know that Costa was not a senior partner at Sage until Noto offered testimony to that effect at this trial. Weinmeier sat at the front of the office and the Respondent agreed that on occasion, Costa would answer the phone and get Weinmeier. There were six people who worked in Sage's office.

On one or two occasions, the Respondent noted that the payee portions of signed checks were blank. Weinmeier offered no explanation for this and the Respondent watched him complete the necessary portions of the check on a computer at Sage's office. The Respondent agreed that he should have brought the contents of the DX 2 e-mail to the attention of IAB. He also admitted that he used a Department computer to check the complaint report filed against Weinmeier and noticed that the "unit referred to" caption on the complaint showed that the matter was referred to IAB. When the Respondent accessed this complaint, it was after speaking to Sprague and "well before" the January 2008 search of his residence. He "guessed" that he did not have authority to access this complaint.

The Respondent said that he was aware that his company, CNL, had been implicated by Sage in their complaint, for \$3,000 initially. He denied that he made phone calls to Sprague to check the status of the case, testifying that he called him to "...[keep] him up-to-date on what this guy (Weinmeier) was doing." The Respondent then conceded that he may have inquired about the status of the investigation, but reiterated

that the majority of his calls to Sprague were updates on Weinmeier. He did not ask any other Department members about the investigation and did not alert anyone else that he was interested in the case.

The Respondent testified that his wife, Vento, did not have much involvement in the day-to-day operation of CNL. The Respondent said that he "...basically ran the show...I ran the business...I was managing the business..." He did not discuss receiving a payroll check from Sage with his wife.

At trade shows, the Respondent said that you never receive a receipt. He never saw Costa sign a check, but noted that he was told that she was signing the checks. The Respondent said that a "whale" refers to an individual who "spends a lot of money" and agreed that Weinmeier was a very big whale and his first biggest client. He agreed that his dealings with Weinmeier had the potential for him to earn a considerable amount of money for him and his family. He admitted that the longer he received the Sage checks, the more money he would have made.

On examination by the Court, the Respondent denied that he was ever instructed to turn over all of his weapons upon being modified. He said that rifles and shotguns were never mentioned, and he did not surrender the weapons that he inherited from his uncle which included three shotguns and three rifles.

The Respondent acknowledged that when he initially spoke to Sprague, he claimed to have lost \$8,000 to Weinmeier. He clarified that this \$8,000 amount represented the total value of the auctions that Weinmeier failed to pay for, and claimed that he was still owed \$22,000 in commission for a total of \$30,000. He never filed a complaint for this. The Respondent admitted that he has a pending indictment in Staten

Island relative to this case. Regarding his prior testimony that he had other communications with Weinmeier aside from the DX 2 e-mail, the Respondent said that Weinmeier called him three times; once to say that his mother was going to the hospital, another time to offer the Respondent cards for sale and third time when he left a message saying that "everything was taken care of, it was all thrown out." The Respondent returned his call and learned that this was not true, and was reluctant to speak to him thereafter. The calls occurred prior to the Respondent's arrest. The Respondent said that he did not apply for retirement from the Department. He said that the Department is forcing him to leave due to his psychiatric condition.

Sarabella, Noto's business partner, met the Respondent five or six times. He also had about two conversations with him about investing and how the sports memorabilia business is very lucrative. The Respondent said that he first met Sarabella when he was delivering "three monster boxes of cards to [Weinmeier]." Weinmeier introduced him as Mr. Sarabella.

As to his off-duty employment, the Respondent said that his commanding officer granted permission by signing an application. It was approval to work at CNL's store, and was approved at the end of 2005. The Respondent did not realize he had to submit another application for off-duty employment when the preceding one expired a year later and completed another one, DX 4, in 2007 which was disapproved. When directed to the "proprietary interest" caption on this form the Respondent said that he answered "no" because his wife was the sole owner of the business. Despite the fact that he did all of the work at CNL, the Respondent said that "legally everything was in my wife's name." He gave the same answer on the 2005 application.

On cross-examination, the Respondent described RX N as handwritten notes and printouts of various cards sold to Weinmeier. These notes were in the Respondent's handwriting and were made when Weinmeier would call to place an order. The printouts were provided by Weinmeier and not by the Respondent and represented a litany of cards ordered by Weinmeier and the prices. Weinmeier would notate on this list if he received the item and if he paid for it. The bottom of the list also reflected a deal brokered by the Respondent for Weinmeier and a golf pro for various cards. The RX N exhibit contains both Weinmeier's spreadsheets as well as the Respondent's handwritten notes.

On continued examination by the Court, the Respondent said that cards were listed on the bottom of RX N relating to the golf pro transaction. He marked this with a "W" in red. Weinmeier created this list of cards that he wanted and the Respondent purchased all of them from the golf pro using several Pay Pal payments and an overnight bank check. This was not an eBay transaction. The Respondent was able to locate additional documentation reflecting this transaction, in evidence as RX S. The documentation included a receipt for \$1,000, a receipt for \$430, money orders, an invoice and an e-mail. The Respondent marked these items with a yellow marker at the request of the Court. He was unable to link a specific card on the "W" list of RX N to a specific, matching receipt.

The Respondent's Case

The Respondent called Lisa Vento-Nielsen. Offered into evidence was a copy of an Internal Affairs Bureau investigating officer's report, Respondent's Exhibit ("RX") A; a photograph of the storefront of CNL, RX B; copies of several photographs of the

offices of Sage Electric, RX C; copies of photographs of CNL taken by IAB, RX D; eleven photographs of the Respondent's home, RX E; an off-duty employment application for the Respondent, RX G; business records for CNL sports, RX F and H; a copy of the plea allocution minutes for Weinmeier from Richmond County Supreme Court, RX I; Pay Pal records, RX J; Commerce Bank records for the Respondent, RX K; copies of Sage checks to CNL, RX L⁴; assorted spreadsheets and vouchers from Weinmeier, RX M; notes and spreadsheets from the Respondent, RX N; listings of cards sold by Weinmeier, RX O; copies of items sold by the Respondent to Weinmeier, RX P; copies of checks for non-eBay items, RX Q; and miscellaneous receipts, RX R.

Lisa Vento-Nielsen

Vento testified that she is employed by Marsh and McLennan as a project manager and she is also a professor at St. John's University. She has a Master of Business Administration (MBA) degree and is currently pursuing a doctorate. She lives with her husband, the Respondent, and has been married to him since 2005.

Around September of 2005, Vento opened a sports collectable business, CNL, with the Respondent. They purchased an existing business called Bases Loaded in the same location as CNL. She incorporated CNL as a limited liability corporation and designated herself as the owner. The Respondent was listed as the vice president and she said that he obtained approval from the Department to work off-duty. Vento said that any money left over after settling the corporate debts such as rent, sales tax and expenditures would be shared as family income, income which was filed with the state and federal government. The business began operating in September of 2005.

⁴ Also in evidence as DX 1

In 2006, the business had a loss. The business also showed a loss in 2007; however, she said that this was when Weinmeier became "one of our main customers." She explained that Weinmeier walked into the store "off of the street" and said he wanted to do business with CNL. Weinmeier claimed to receive a "great compensation package" from Sage that allowed him to invest for the company and spend as much as he wants. Vento noted that she did not find this suspicious, as her business experience has shown that people can, in fact, receive rather large bonuses. She said that Weinmeier became CNL's "whale."⁵ Neither Vento nor the Respondent knew Weinmeier prior to him coming into the store. On his first visit in late 2006, he made some "minor" purchases on an American Express card and talked with the Respondent. He began to make purchases for Sage in late February or March of 2007, and Weinmeier told the Respondent that he had the authority to make purchases for Sage. Weinmeier's favorite product to buy was "Bowman Chrome"⁶ cards. He would order the cards from CNL and pay with Sage checks. Vento said that she and her husband decided to accept from Weinmeier the Sage checks, as he was their first major customer. CNL would locate the cards being sought by Weinmeier on eBay and bid on the auction. If the auction was won, Weinmeier would pay using a Sage check and include a commission for CNL for each transaction.

Vento reiterated the manner in which CNL conducted business with Weinmeier. She said that Weinmeier would telephone the Respondent with specific requests for cards that he saw on eBay and would set a limit on how much to bid for a particular item. Weinmeier would monitor the auction and remain in contact with the Respondent,

⁵ Vento explained that a "whale" is a good customer, presumably, one who spends a considerable amount of money.

⁶ A limited edition type of baseball card produced by Topps which features prospective players. Vento indicated that these cards have the potential to become very valuable.

occasionally authorizing higher bids so that the item could be won. If an item was won, a Pay Pal transaction was initiated to pay for that item. This was linked to Vento and the Respondent's personal checking account. Vento noted that she did not want to change the eBay or Pay Pal accounts because of the fact that their existing personal account had a high level—99.7%—of positive feedback. Such a high level of positive feedback was necessary in order to bid on the “hot” items and a lack of positive feedback could result in bidding for items being denied. Starting a new account would have resulted in a zero feedback rating.

Vento acknowledged that CNL received about 165 checks from Sage over an eight to nine month period. Many of the checks were for amounts ranging from \$1,000 to \$3,000, and she said that the checks were usually payment for two to three card transactions, plus a commission. Weinmeier was constantly making orders with the Respondent. Vento characterized it as “a constant affair” and said that the receipt of 165 checks was not unusual given the amount of orders that Weinmeier was placing. Aside from the eBay transactions, Vento said that she and the Respondent purchased merchandise at memorabilia shows. She said hundreds of dealers would assemble at the shows to offer cards and memorabilia. Weinmeier would sometimes go to these shows, or in the alternative, ask the Respondent to look for particular cards. These cards would be paid for with Sage checks as well. Vento said that there was never an instance where she and her husband did not buy Weinmeier something at these shows.

Vento claimed that the baseball card industry is an international one, and likened it to the stock market. She provided an example of a veterinarian whom she knows that

purchased cards for investment purposes, did not open the boxes and simply stored them away in his basement.

Regarding the Sage checks, Vento knew that they were being deposited in her personal checking account. She denied having any reason to believe that the checks were not legitimate and said that her life was "great up until Joe Weinmeier walked into my store and this horrible thing happened...it has made the last year of our lives a living hell." In addition to Weinmeier's representation that he was authorized to use the checks, Vento testified that her husband went to Sage "at least twice a week" and added that Weinmeier would call her home from Sage's telephone number to discuss cards. She noted that her husband spoke to Costa and Sarabella and delivered cards to Sage. She indicated that none of the Sage checks ever bounced, and the account in which they were deposited is the Respondent and Vento's account which they pay their expenses out of.

In November of 2007, Vento said that her husband got a call from Sprague informing him of Weinmeier's arrest. She said at this point, she realized that "our customer was a criminal" and bids on pending items for him had to be cancelled. When the police came to her home in January of 2008, Vento said that she provided everything she had. She said that she already had the records ready to hand over and also supplied her laptop which she said contained eBay records. Vento also testified that she constructed her own spreadsheet in order to show money that was received via the Sage checks and the items which were purchased for Weinmeier.

Vento identified RX H as the spreadsheet that she prepared in March of 2008 with "subsequent minor updates" that reflected a Citibank statement of Sage's account. This reflected a total amount of \$346,999.89 of deposits from Sage checks, deposited

primarily through Vento and the Respondent's personal bank account, although she noted that \$17,000 was deposited via the CNL business account. Referring to the top page of RX H, a chart, Vento explained that she initially believed that the total deposits were \$326,014.89, however, Sage identified an additional \$20,985, hence the \$346,999.89. The second line of this chart reflects the additional checks identified by Sage, checks that Vento claimed that she learned about during the weekend preceding this trial when she received the Department's discovery materials. She noted that in reconciling the original known deposits against Sage's records provided in discovery, she found a \$10,000 discrepancy. That is, there was \$10,000 in checks to CNL that Sage has not yet noticed. The third line of the chart represents the total amount, and the following line represents cards purchased via eBay, a total of \$225,011.26. She said that this figure represents "about 60 percent or 70 percent" of what the Respondent spent on eBay over a period of a year, and was arrived at by reviewing e-mail trails and assorted receipts made by the Respondent.

Vento identified RX J as Pay Pal records and said that the spreadsheet can be cross referenced to these documents. She said that the Pay Pal records specify the name of the card, the date it was purchased, the eBay ID number, the dollar amount, and specifies that it was sold to Weinmeier in the notes field. Each eBay transaction from December 13, 2006 to November 17, 2007 is broken down on RX H. This document also showed purchases from dealers of \$42,650 from Vento and the Respondent's personal account. The line below this one represented cards sold by the Respondent to Weinmeier that were already part of the Respondent's collection or from inventory at the store or from a prior year's eBay purchases. Based upon her accounting, Vento testified that the

total items that CNL purchased on behalf of Weinmeier as a result of receiving Sage checks was \$300,563.23. She noted that there were smaller purchases, more difficult to document, in addition. As to the total commission that CNL earned, Vento explained that it was roughly \$49,436.66, which included a cash bonus from Weinmeier to the Respondent for \$3,000. \$27,000 of that amount was paid to New York State as sales tax, leaving a profit of about \$22,436.

CNL continued to have other clients as Weinmeier made his purchases. Vento said that she and the Respondent were "still maintaining a business and hoping to catch other whales." She never spoke to Costa. As to RX H, Vento indicated that she started preparing it in March of 2008 upon the Respondent learning that he was going to be arrested.

On *voir-dire* examination regarding RX H, Vento claimed that it was supported by other documentation. She said she "did a huge process" to construct it and the documentation includes e-mails and eBay transactions. She contended that the eBay transactions were evidence that CNL purchased memorabilia, combined with Weinmeier's e-mails to the Respondent that prove that he received the items. Vento said that CNL did not prepare receipts for most transactions as they were a small business, but the Respondent made various handwritten notes. She said that the e-mails from Weinmeier are spreadsheets from "his Sage computer." When asked if she could prove that the e-mails actually came from Weinmeier, Vento said, "Of Course...they are an e-mail trail. E-mail today is pretty much admissible and traceable. They were from Joe Weinmeier's e-mail account." She then told the Advocate that he could verify that it was, in fact, Weinmeier's account by means of a subpoena.

When shown DX 2, Vento told the Court that it was an e-mail from Weinmeier. She said that she knew it was because she was familiar with his e-mail ID of "JNA Specialty." She noted that the e-mails that she was referring to came from a different address, "JSX."

On continued *voir-dire* examination of RX H, Vento reiterated that beginning on page seven, it listed different cards sold to Weinmeier. Few of what is on the list came from the Respondent's memory and she stated that many have the original eBay ID number. A small percentage came from the Respondent's recollection and those that did, she claimed, were also on a spreadsheet. She contended that she performed a "triple check" on the contents of this list. Some of the transactions on the list came from the non-eBay e-mail address that belonged to Weinmeier. Vento testified that some of the cards bought by Weinmeier were subsequently resold by him to a dealer. She also said that the Respondent would handwrite notes as to what cards Weinmeier received and he would acknowledge that he received the cards with another note.

On continued direct examination, Vento was shown RX J and RX L through Q. She explained each exhibit and how they related to her construction of the spreadsheet, RX H. She described RX J as "detailed Pay Pal records of every transaction" from December of 2006 to November of 2007, organized by month and appearing on pages seven through 15 of the spreadsheet. These records led Vento to arrive at the \$225,011.26 figure of cards purchased via eBay. RX K are records from Commerce Bank, used by Vento to track deposits, and RX L⁷ are Sage checks turned over by the Department during the discovery process, used by Vento to "cross check" her checks. RX M are vouchers and receipts and miscellaneous effects from Weinmeier documenting

⁷ Also in evidence as DX 1

his receipt of cards; some of these are handwritten and others are spreadsheets from Weinmeier's e-mail address.

Vento said that RX N is receipts of cards sold to Weinmeier, in the form of handwritten receipts made by the Respondent. RX O and P reflect cards sold by Weinmeier over the internet that had previously been sold to him by the Respondent. In response to the Court's questioning, Vento testified that Weinmeier "made at least \$100,000" on a large resale of cards to a dealer. RX Q represents checks "showing cash paid for [Weinmeier's] transactions...when he would give us a Sage check because we were going to a show or talking to a dealer...something...on eBay that we had to pay by check." Vento reiterated that she compiled the Excel spreadsheet exhibit, RX H, from a "myriad of sources," described in the aforementioned exhibits, and created the exhibit to "ease the courts from having to do it." She prepared it upon learning that the Respondent was going to be arrested. The first instance where she learned of a problem with the Sage checks was in November of 2007 upon learning of Weinmeier's arrest. She said she never believed the checks were stolen or unauthorized.

On *voir-dire* examination of RX J through Q, Vento claimed that the Pay Pal records were certified records and said she printed them from the Pay Pal site. She claimed that there was "no way" someone could create the Pay Pal records and contended that they were authentic records and could be traceable. As to RX M, Vento said that about four pages of this exhibit consisted of handwritten notes from Weinmeier. When asked how to verify that it was, in fact, Weinmeier's handwriting, Vento told the Advocate to compare it to the forged checks. She said that the notes had been handed from Weinmeier to the Respondent, and she received them from him. Regarding e-mails

from Weinmeier, Vento testified that her husband created a folder on her computer and misspelled Weinmeier's name on this folder. She is certain that the e-mail account belonged to Weinmeier because the e-mails concern cards that were sold to him.

When asked if there were any actual, official sales receipts, Vento said there were none. She said RX N was "CNL receipts of cards sold to [Weinmeier]...internal handwritten receipts." Vento said that her business did not have the technology to issue customers receipts for purchases and that they did not issue carbonless type receipts where the customer received a copy and the store retained a copy. In response to the Court's inquiry, she agreed that the exhibit was a record of transactions. Also included in these notes were records of sports jerseys purchased, and this was also included in the spreadsheet. RX N also contained documentation from a grading site and handwritten notes from the Respondent. RX O represented internet listings of cards that had been bought by Weinmeier from CNL and later resold by him. These cards which were resold had individual serial numbers and identifiers and had also been graded by a grading company. The cards that Weinmeier resold were the same cards that he had previously bought from the Respondent. Vento believed every item listed in RX O was a resale by Weinmeier.

RX Q contains checks for purchases made by Vento and the Respondent to be sold to Weinmeier. It represents about \$21,000 in transactions, in about four or five checks. The checks in this exhibit associated with Weinmeier are designated with asterisks. Confronted with the fact that the checks do not have Weinmeier's name on the face in the memo section, Vento said that you can validate them by "track[ing] the product and you see the product on the other sheets and other listings." She also said that

the Respondent wrote these checks and she did not recall having written any of them. In response to the Court, Vento identified the two packets in this exhibit as photocopies of checks and eBay transactions for individuals who wanted to be paid by check instead of Pay Pal.

Vento agreed that RX P consisted of eBay listings. She contended that the items had a "full sales history" on eBay and could be traced. She believed that some of the listings represented completed sales. In response to the Court's inquiry, Vento said that the listings represented cards sold by CNL to Weinmeier and then resold by Weinmeier to a dealer who then resold them on eBay.

On cross-examination, Vento reiterated her educational credentials but denied that she was an expert in marketing. She expressed her belief that no one is an expert in anything. She agreed that if not for the Respondent's interest in sports memorabilia, she would not have opened up CNL.

When questioned about her direct examination testimony that she knew that the Sage checks were valid, Vento testified that she believed this because Weinmeier represented himself as a "very big wig" at Sage and expressed that he was authorized to "do all different things." Weinmeier mentioned to the Respondent that he was authorized to use the Sage checks. The Respondent handled the buying and selling aspect of the business and also, on occasion, went to Sage to deliver items. Vento said that she was in the car on a few of these occasions, but she never went inside the Sage office. She admitted that her information as to the acceptance of the Sage checks is derived from the Respondent and the business records that she constructed.

Vento again said that she never spoke to Costa. Her understanding of the arrangement was that Weinmeier was purchasing cards and memorabilia through CNL because Costa and Sage wanted to invest in sports memorabilia. She noted that Weinmeier claimed that it was part of his compensation for doing "excellent in some copper wiring business...." Vento relied on what her husband told her and eight months of Sage's checks being cashed in her account. She reiterated her distaste for Weinmeier and said that she never would have opened CNL if she knew that the problems herein would have come about. She explained that CNL kept no sales receipts because there were no problems with Weinmeier, and it was known what merchandise he was purchasing. She added that the Respondent was communicating with him on a constant basis. She did not view the absence of sales receipts as a bad business decision because it was a "mom and pop store." Vento said that she and the Respondent were not required to conduct investigations of their customers and that they relied on Weinmeier's representation that he was authorized to use Sage's checks. He claimed to be "...on the board....a financial person with the company and responsible for all finances." This, she said, coupled with her experience on Wall Street where colossal bonuses are common, did not cause her to be suspicious.

When asked to examine page four of DX 1, Vento identified it as a check that was not signed. She was unaware that the Respondent accepted an unsigned check and testified that had she known the check was unsigned, she would have instructed the Respondent to have the check signed. She had never seen this particular check before this proceeding and this unsigned check was accepted and cashed by the bank. Vento recognized check 1333 in this exhibit as a payroll check. She said that she asked the

Respondent about it after it was already deposited and he said that Weinmeier claimed it was the only check that he had. Had she been aware of this check, she would have told the Respondent to get a regular check in order to be consistent with the others. She testified that she lacked the experience to know the tax implications for a payroll check versus a regular check. She has received payroll checks in the past and knew that they were taxable, but noted that she paid sales tax on the transactions in CNL.

The Respondent often received multiple Sage checks on the same day. Vento testified that Weinmeier would issue separate checks for orders that he made on each day; for example, an order on Monday would be in one check and an order on Tuesday would be in another. She was unaware if Weinmeier ever purchased a \$10,000 card and agreed that there were no checks for \$10,000. She did not believe Weinmeier's practice of issuing multiple checks was strange. While CNL had an accountant, there was no formal ledger. Vento reiterated that the Respondent went to Sage "at least twice a week," but then said it was "close to twice a week for five months." She assumed that he went to Sage at least 40 times, and said that Weinmeier also came to CNL.

Vento acknowledged that the Respondent received a phone call from Sprague about Weinmeier's arrest. When presented with DX 2 (a print-out of an e-mail), she testified that she first saw it shortly after the Respondent received it on November 9, 2007. She testified that the e-mail was "...insane....made no sense to me whatsoever and it made no sense to my husband..." She did not ask her husband about the communication because she said it made no sense. Vento reiterated that Weinmeier told her husband that he was authorized to not only purchase goods for Sage, but also "for his own compensation."

On examination by the Court, Vento was asked to identify in the Respondent exhibits the collection of cards that Weinmeier purchased for \$100,000. She initially believed them to be in RX O, but then said they were in RX P. She said the transaction consisted of "multiple cards that were sold for [\$100,000] and then resold." She identified the transaction as six cards purchased by CNL for Weinmeier, and then resold by Weinmeier to Kevin Burge. The Respondent told Vento that Burge paid \$20,000, plus four checks of \$20,000 to Weinmeier. Vento was asked to demonstrate in the Respondent exhibits the six cards purchased by the Respondent. She was excused from the stand in order to review the exhibits and assemble the material.

Vento resumed the witness stand and was able to identify the purchase and sale of the six cards in the various exhibits the Respondent placed in evidence. They included a 2007 Bowman Chrome Fernando Martinez orange infraction auto, purchased by the Respondent on September 20, 2007 and later listed for sale under Weinmeier's account, a 2007 Bowman Chrome Joba Chamberlain gold refractor, purchased September 10, 2007, a 2001 Bowman autograph Albert Pujols on October 17, 2007, a 2001 Bowman Chrome Jose Reyes refractor rookie card on August 30, 2007, a 2001 Bowman Chrome Jose Reyes refractor RC PSA 10, on October 30, 2007, a 2005 ultimate Jason Verlander rookie card which was already owned by CNL or bought at a show.

On re-cross examination, Vento testified that it had been represented that Costa was a managing partner of Sage and approved Weinmeier's writing of the checks. She said that her husband spoke to Costa a few times who represented that she was one of the bosses. Vento said that the Respondent took no other steps to verify Costa's position and she added that a business owner in New York is not required to do anything else.

FINDINGS AND ANALYSIS

The basic facts in this case do not seem to be in dispute. An electrical contracting company on Staten Island – Sage – was the victim of an embezzlement scheme. One of the embezzlers was Carol Costa, an employee who had been bookkeeper for 17 years – almost the entire life of this 21-year-old firm. Sometime around 2005 into 2006 business increased exponentially and Sage hired an accountant, Weinmeier, to work with Costa.

The testimony does not indicate if Costa embezzled company funds before Weinmeier came on the scene, but we do know that she presented a false social security number and failed to issue 1099 statements to herself. Apparently this was not only done to avoid taxes but so that she could hide her income and collect disability benefits while being employed at Sage.

With the coming of Weinmeier the embezzlement either started or grew, but it certainly was going on from a period in early 2007 until the scheme was uncovered on Election Day 2007. Noto put the overall loss at about \$1.8 million, with \$1.1 attributable to Costa and about \$700,000 or so attributable to Weinmeier. Of Weinmeier's \$700,000 about half was in checks made out to the Respondent and the other half in checks made out to Weinmeier, his wife, her parents and others including the two owners of the company, Noto and Sarabella.

The relationship of Costa's alleged crimes to Weinmeier's was not fully explored in the testimony and may not be known. Noto did testify that Weinmeier and Costa were altering records, including monthly bank statements and check ledgers and concealing material from the accountants. The Respondent apparently believed that Costa signed the checks, a belief that was hardly unreasonable. Nor is it unreasonable to assume that Costa

was at a minimum aware of the fraudulent checks that were given to the Respondent and helped conceal the fraud.

The Department alleged that in the period from March to November 2007 approximately 165 checks totaling about \$336,000 were made out to and cashed by the Respondent, (see DX 1).

The three specifications that encompass this conduct invoke the Penal Law. Specification Nos. 1 & 2 incorporates the crimes of larceny and possession of stolen property and each of these require the element of "intent." Specification No. 3 incorporates the crime of possession of a forged instrument and requires the elements of "knowledge" and "intent."

To be found guilty the Department has to have established that the Respondent intended to take and possess Sage's money without Sage's permission and authority and that he had to have known that the checks were forged. While the burden of proof is lower than in a criminal trial the elements to be proven are the same. The Department must establish by a preponderance of the evidence that the Respondent knew about the criminality of the conduct of Weinmeier and Costa.

There is no direct testimony on this subject. Neither Weinmeier nor Costa testified at this trial. No direct evidence was presented that the Respondent had the requisite knowledge. Therefore on this central issue; the Respondent's knowledge of the criminal scheme and the Respondent's participation in that scheme, the evidence is circumstantial.

The standard of proof for circumstantial evidence is well known and often stated: (a) the hypothesis of guilt should "flow naturally from the facts proved, and be consistent

with them all"; (b) the facts proved must all be consistent with guilt and inconsistent with innocence and exclude "to a moral certainty" every hypothesis but guilt People v. Wachowicz 22 NY2d 369 (1968). Circumstantial evidence, though encountered most frequently in the field of criminal law is equally applicable to civil law, Caporino v. Travelers Ins. Co. 95 AD2d 160, 164 (1st Dept. 1983), thus the rule must be applied in assessing the evidence in this case.

The strongest circumstantial evidence of guilt is found in the fact that in a roughly seven-month period between March and November 2007 the Respondent cashed a very large number of checks from Sage for a very significant amount of money and that all of these checks were unauthorized.

The Department has identified two factors as being further indications that the Respondent knew or should have known that there were problems with these checks. One was a check which was in a different format than all of the others and was marked "payroll." The second factor was an e-mail that the Respondent received from Weinmeier after Weinmeier's arrest. These and other issues raised by the Department will be discussed later in this decision.

The Respondent has claimed that money received was to pay for baseball cards that were ordered by Weinmeier who he believed had authority to buy them using Sage checks. After a few transactions were completed he called Sage and spoke to Costa who confirmed Weinmeier's authority. Further, he sometimes delivered cards to the corporation's offices where he also, sometimes, picked up orders for cards on spreadsheets prepared on the company's computers and where he met Costa and one of the partners, Sarabella.

The Respondent notes that every check cleared the bank without any challenge so he had good reason to assume the checks and signatures were valid. The Respondent notes that he did not hide the transactions and endorsed every check before depositing them into an account he shared with his wife. There is testimony from Noto that Costa occupied one of the four private offices – two of the others belonging to the two partners and one was a conference room – so she had the appearance of someone in authority. There was no signage to indicate what each person's name was or what responsibilities or title they had within the corporation. This adds credence to the claim that Costa had the appearance of being a person in authority because she had one of the private offices.

Moreover, if the Respondent called on the telephone to try to speak to the owner, again by Noto's testimony, either Costa or Weinmeier would likely answer the phone.

From all of this it would appear that the Respondent has put forward an account of events that is reasonable and consistent with his not knowing that the checks were unauthorized or forged and that therefore the Department has not met its burden of proof. However, because so many issues were raised during the trial the Court will address each of them.

A. The Whale

During her testimony the Respondent's wife, Lisa Vento-Nielsen (hereinafter Vento), indicated that when she and the Respondent purchased the business they were told that what they should hope for was a large customer or two who would make the business profitable. She described such a customer as a "whale." Much was made about

the fact that Weinmeier was a very large whale as though there was something inappropriate about this on its own.

There is nothing inappropriate or illegal about a business wanting to have and to keep a large customer.

B. The unsigned check

Among the approximately 165 checks there is one, payable to the Respondent, which was unsigned by anyone purporting to represent Sage. The Respondent deposited it into his account and the check was cleared by the bank holding the Sage checking account. The Department has attempted to argue that the fact that the Respondent endorsed and deposited this check was somehow evidence that he knew the checks he was receiving were bogus. Frankly this Court does not understand that argument. On the contrary it seems to the Court that an unsigned check should have been flagged by the bank and might have called attention to the other Sage checks being made out to the Respondent. These checks were being signed by someone and the bank was apparently accepting those checks. Why would a conspirator in the embezzlement take a chance on flagging the criminal conduct by depositing an unsigned check rather than getting the check signed with a signature that was working effectively?

The Respondent denied knowing at the time he deposited the check that it was unsigned and there being no proof that he did, the unsigned check is of very little probative value in this case either way.

C. The e-mail

On November 8, 2007, apparently just before he was arrested, Weinmeier sent an e-mail to the Respondent. The Respondent printed the e-mail out the next day and saved it. He turned it over to IAB when they came to his house on January 17, 2008.

The text of the e-mail is as follows (punctuation and spelling as in the original):
“yo its joe. Shit hit the fan but i am working everything out and if anyone asks you dont have any clue. they just want \$40,000 back in which i am going to give them. i will call you when i straighten everything out.”

The Department argues that this e-mail corroborates that the Respondent knew about Weinmeier’s fraudulent activity. The Respondent has offered an explanation for it – so both need to be examined.

The directive that, “If anyone asks you don’t have any clue” certainly smacks of knowledge on the Respondent’s part but it is not a statement by the Respondent. It is an unsworn, hearsay statement of Weinmeier.

The Respondent claims that when he received this e-mail he believed that the problem was that Weinmeier had exceeded the amount of money he was authorized to write checks for by \$40,000. Given the situation the Respondent described this is not an unreasonable interpretation of what the e-mail was about. In any event an e-mail authored by a known criminal who was trying to wheedle his way out of responsibility for his crime is hardly credible evidence for the proposition that the Respondent knew what that criminal was up to.

D. The payroll check

Another check that was singled out by the Department was a check clearly marked as a payroll check. The Department argues that the fact that the Respondent accepted a payroll check indicates that he knew that Weinmeier was passing him bad checks.

The Respondent claims that Weinmeier told him that the check was the only one he had and that the Respondent should accept it and it would be alright. Like the unsigned check, the payroll check had the potential to be a red flag bringing attention to what was going on. There is no social security number or withholding listed on the check, nor is there anything else to make it an actual payroll check. Again it is unclear how this check provides evidence that the Respondent knew that he was accepting forged or unauthorized checks.

E. Authorized signature

There is no clear testimony about who signed the checks. There was some indication that it was Costa, which is certainly a possibility. Noto first testified that Costa was not authorized to sign checks but later in his testimony he did indicate that he authorized her to sign specific checks. Noto did indicate that Costa was involved in the embezzlement although he did not indicate what her exact role was. If Costa was the person who signed the checks, that fact might explain why the bank did not question their authenticity. On the other hand, the bank authorized payment on an unsigned check, so we really do not know.

F. Costa

There was testimony from both Noto and Sprague that Costa was about to be arrested although no one indicated what the exact charges would be. It is clear that Costa's alleged criminal activity did not become apparent until some time after Weinmeier's arrest in November 2007 and even after the Respondent's arrest in January 2008. Indeed, Noto testified that Costa was fired in August 2008 and as of March 2009 she had still not been formally charged. Apparently Costa, whose deceptions apparently go back 17 years, was very skilled at hiding her misdeeds. Noto also indicated that Costa might not be her real name as she had a different social security number under the name La Rossa.

The Respondent believed that Costa was signing the checks and had authority to do so. Noto agreed that he did authorize her to sign some checks so that the notion that she signed checks and had authority to do so is not something cut out of whole cloth. Although Noto claimed she had no formal title at Sage, she seems to have the appearance of a senior financial officer.

G. Weinmeier

Weinmeier was an accountant who was hired when the business had grown too big for Costa to handle its finances alone and apparently without a degree.

On February 17, 2009, Weinmeier pled guilty to a reduced charge of Criminal Possession of Stolen Property in the Third Degree, a class D non-violent felony. His plea minutes were offered into evidence. They are fairly barebones with no full statement as to what he did, how his scheme worked or who his accomplices were. He made no

statement regarding the Respondent. He was promised a Conditional Discharge if he paid \$150,000 in restitution to Sage before sentencing.

H. The Respondent's wife

The Respondent's wife, Vento, testified in this matter. She was talkative and somewhat chatty, volunteering information such as recalling a particular date because she had just had a baby. Much of what she testified to was hearsay about things her husband told her about discussions he had had with Weinmeier and Costa. The Respondent was the person best suited to testify on these matters and the Court disregarded much of that testimony.

What Vento was able to do was to prepare spread sheets and other materials explaining how their business with Weinmeier worked. This testimony was both credible and useful.

She was able to explain that Weinmeier would order cards or collections of cards and that the Respondent would search for those cards mostly on eBay but also from their existing collection and at cards shows. She explained that the cards would then be paid for and Weinmeier would then get them. She also said that sometimes Weinmeier would sell the cards and she was able to trace some of the sales on eBay.

Her testimony in this regard was highly credible for several reasons. First her initial spread sheet was prepared before the Department provided discovery. When she received that material, which included the list of checks, she updated her spread sheet. She indicated that in her original calculations she missed a number of checks which were part of the discovery package but she also had a number of checks in her records that did

not appear in the Department's list. In the end, the list of checks she prepared exceeded that of which the Department prepared. So that while the Department claimed the checks totaled about \$336,000, she produced records indicating that the amount was actually about \$347,000.

Further, the Court picked several cards at random in her records and asked her to trace them from purchase to sale. She was able to do this for almost all of the cards the Court selected.

The Department has argued that the websites of the documentation she provided had not been checked and that certainly is a point to consider. However, looking at the large quantity of material she provided it is difficult to imagine how she could invent all of these records let alone be able to match random documents for the Court.

What the Court finds this establishes is that the Respondent was in fact in the card business and that he was purchasing cards for Weinmeier and selling them to him.

Setting forth all of the expenses against income Vento claimed shows that although there was a high volume of transactions, there was a profit of \$22,000 which is not an unreasonable enrichment that might have sent up red flags about the business dealings. She also claimed that among the expenses was \$27,000 for sales tax which is close to the amount that would be due on the volume of business claimed.

I. The Respondent

The Respondent is being retired from the Department involuntarily on a psychiatric disability. He is on medication and the Advocate requested the Court to ask about his mental state before he began testifying on March 3, 2009. On his second day of

testimony, March 4, 2009, the Court was told that he had forgotten to take his medication the night before and the Court was asked by both counsel to inquire about his ability to testify. The Court found that he was able to testify but noted that his testimony was slow on the first day and slower on the second.

The Respondent was able to testify and explain how the business worked. There was, to be sure, some confusion. During his Official Department interview he said that he met a "Jeremy Noelle" at Sage. He said that the name Jeremy Noelle was incorrect and he had really meant Charles Noto but agreed that he never saw Noto before Noto testified at this proceeding. The Respondent was confused about who he had met and what the real name of that person was but it is not clear how the Respondent's misstatements indicated guilt on his part.

The Respondent, no less than Noto and Sarabella, was dealing with some pretty crafty people and while we don't know who they are or what their relation with the firm is, Noto indicated that others besides Costa were about to be arrested.

Noto apparently had no idea, over the course of years, that he was employing someone who was not paying taxes and was on disability. It is not clear what deception, impersonations or misinformation the known embezzlers may have perpetrated on the Respondent.

J. Sprague

Much of Sprague's testimony had to do with his opinion regarding the Respondent's innocence or guilt. The Court is not bound or persuaded by Sprague's opinion. What is significant about Sprague's opinion is that, as head of the detective

squad investigating what was then the Weinmeier case, he treated the Respondent as a victim not a perpetrator. He testified that he told the Respondent to hold onto cards the Respondent had purchased for Weinmeier as evidence. The Respondent claims that he told him to hold on to everything related to the case until it was called for. Whatever was actually said it is clear that the Respondent held on to everything he had and turned it over to IAB when they came looking for material in January 2008. Sprague also agreed that he did not ask for any of the documents connected with the case.

When Sprague originally called the Respondent he complained of a loss of about \$8,000 for cards that were ordered and purchased but had not been paid for. This complaint is consistent with what both the Respondent and Vento said about how they did business with Weinmeier.

K. Cooperation

There was repeated testimony that the Respondent was cooperative. When IAB came with a search warrant for the store he explained that the material was actually at his home. He consented to a search of his home and turned over the documents he had put together, including the e-mail. His wife also alerted the officers to the existence of a laptop computer at home and turned that over voluntarily as well.

Cooperation can be considered as some circumstantial evidence of innocence just as flight is generally considered to be some circumstantial evidence of guilt. It cannot stand alone and must be considered along with all of the other evidence. In this case it is worth considering that the Respondent was by all accounts very cooperative.

Overall the Respondent's conduct was that of a victim eager to help the

authorities obtain evidence against the criminal. In his closing argument while speaking about the e-mail the Advocate argued that the Respondent only turned it over because it would have been found in any case. It is possible that computer experts with the Department might have done the kind of exhaustive computer search and found that e-mail but it is also possible that the Department would never have found the e-mail if the Respondent had not turned it over. For instance there is no evidence or any indication that the Department engaged in that kind of a search for other e-mail or evidence that might have been more inculpatory than the one e-mail communication we have.

Indeed even the laptop computer containing business records might not have been recovered if the Respondent had not turned it over voluntarily because we don't know if the Department would have sought a search warrant for the home and the Respondent could have secreted it elsewhere before any search. The fact is that the Respondent and his wife made all of their materials available to the Department, conduct that is consistent with innocence.

L. Due Diligence

In a case involving fact similar to this one the New York State Court of Appeals addressed, in detail, the responsibilities of a bank and of an account owner. In the case of Putnam Rolling Ladder Co. v. Manufacturers Hanover Trust Co., 74 N.Y.2d 340, (1989), the bank accepted and cashed a series of forged checks over time. The Court of Appeals in determining liability between the bank and the account owner noted:

Articles 3 and 4 of the UCC⁸ envision a series of shifting burdens of risk of loss with respect to forged checks. Initially, the law places the risk of forgeries on the bank. A forged signature is "wholly inoperative as that of

⁸ Uniform Commercial Code

the person whose name is signed" (UCC 3-404 [1]), and therefore is not "properly payable", and the bank cannot debit the depositor's account (UCC 4-401 [1]). This is, of course, in accord with the pre-UCC theory of the relationship between a bank and its depositor as a debtor-creditor contract, under which payment of a forged check is a breach of the bank's agreement to pay out funds only upon the customer's authorization, for which the bank is strictly liable (*see, Hartford Acc. & Indem. Co. v American Express Co.*, 74 NY2d 153, 164).

The UCC, however, imposes certain reciprocal duties on the customer. Failure to comply with those duties shifts the burden of loss from bank to customer. UCC 4-406 imposes upon a customer the duty to inspect its statement and canceled checks with reasonable care and promptness. Failure to do so results in preclusion of any claim against the bank for repeated forgeries by the same wrongdoer after the first such forged check and statement reflecting it are made available to the customer. This rule reflects the fact that the customer is generally in a better position than the bank to prevent repetition of forgery. A skillful forgery may not be detected by even a careful bank inspector, but the customer to whom the canceled check and statement are returned should know whether or not it actually intended to authorize payment of its funds to the named payee (*see, UCC 4-406, comment 3*). Thus, the shifting burden of loss is intended as well to encourage the parties to use reasonable care in situations where, from a systemic point of view, that is the efficient loss-avoidance mechanism.

Thus both the bank and Sage had a responsibility to insure that forged checks did not clear. The bank was required to check the signatures and Sage had a duty to review its statements and cleared checks. The fact that the each and every check issued to the Respondent cleared without incident provided strong evidence to the Respondent that the checks were authorized.

Indeed by calling the Sage office and speaking with Costa and going in person to the Sage offices, the Respondent exercised a measure of due diligence that exceeded that exercised by either the bank or the owners of Sage during the period of time from March to November 2007.

M. The Jersey

Much was made of the fact that Costa wanted a very rare and expensive collectable sports jersey. The Respondent said he searched for it but could not find it whereupon Weinmeier made a vulgar remark about Costa and told the Respondent to forget about getting the jersey. The remark was made outside of Costa's presence and there is no evidence that she ever heard it or if she did that she was offended by it. The Court was unable to discern how this event provided any evidence that the Respondent knew of Weinmeier and Costa's illegal conduct.

N. Follow the Money

The Department had access to the Respondent's bank accounts and claimed to have done an audit. The Department presumably could have searched for other assets. There is no evidence or even an indication that the proceeds of the checks were used for anything other than the purchase of the cards as claimed by the Respondent and his wife.

O. An Electric Company purchasing baseball cards

Some issue was raised that the fact that an electrical contracting company purchased baseball cards. As any law student knows, corporate charters are purposely drawn broadly to allow the entity to pursue virtually any kind of business endeavor. Sage appears to be a privately held corporation and the owners essentially can do what they want.

To the extent that it may have raised questions, the Respondent did exercise some level of due diligence to insure that the company knew what was going on.

P. Off-Duty Employment

The Respondent is charged in another specification in this set of charges with failing to obtain permission to engage in off-duty employment for his baseball card business. In yet another specification he is charged with misrepresenting his relationship to that business on forms that he did file with the Department. It is necessary to examine that conduct in light of the serious criminal charges.

The Respondent had permission to engage in off-duty employment at CNL Sports Cards and Collectibles and to be involved in the sale of sports cards and memorabilia based on an application dated September 3, 2005. That permission lapsed as the Respondent did not renew it. He again applied for permission to engage in off-duty employment on November 23, 2007 which was disapproved for reasons not directly related to these charges.

On both of the applications the Respondent checked off a box that indicated that he did not have a proprietary interest in the business in which he wished to engage.

This second offense is most troubling as obviously he had a proprietary interest in this business, CNL, which bears a name made of the initials of his himself, Chris and his wife, Lisa. Additionally, both he and his wife testified that he is the one who did virtually all of the work in connection with this enterprise and Molina described a bank signature card where Vento was listed as president and the Respondent as vice-president of the company.

The question at this point is what relationship this conduct had to these charges. The answer seems to be none. The original filing occurred long before the first check was cashed and the second filing occurred after the arrest of Weinmeier.

If the Respondent was trying to hide his proprietary interest in the business during the first filing it would seem to have been for other reasons. On the other hand it could have been a matter of plain foolishness because by the time of the second filing the Department was fully aware of his relationship to the business.

Q. Did the Respondent really visit the Sage offices?

During his closing argument the Advocate raised this issue for the first time. He stated that the only evidence that he did, came from the Respondent himself and that both he and Noto agree they never saw each other until this trial.

Because the issue came up after the close of testimony it was not fully explored. Noto testified that he was in the office every day but that he did a large amount of work in the field. It is possible that the Respondent and Noto did not see each other by chance or by design of Weinmeier and Costa who could have set things up to insure that no such meeting occurred.

More importantly there were some items in the evidence that tend to corroborate the Respondent's claim that he did visit those offices. The first is that the Respondent apparently knew the layout of the offices and where both Weinmeier and Costa sat. Additionally Sprague testified that when the complaint first came in Sarabella was the representative of Sage who brought the matter to the police. Sarabella apparently knew who the Respondent was because he knew the name of the Respondent's company, CNL, and had an SBA card with the Respondent's name on it.⁹

⁹ The in this were made out as payable to the Respondent, see DX 1. There do not appear to be any checks payable to CNL.

This would corroborate not only the Respondent's claim that he visited the Sage business offices but also his claim that he met Sarabella. Indeed given Sarabella's involvement with the criminal case, his meeting with the Respondent and the statement that Weinmeier allegedly made to him when Sarabella confronted Weinmeier with his misdeeds, it is surprising that Sarabella did not testify.¹⁰

Conclusion as to Specification Nos. 1, 2 and 3

There is a very reasonable view of the facts herein which would indicate that the Respondent and his wife were innocent victims of the deceptive and fraudulent conduct of Weinmeier and Costa. Because the Department has failed to exclude that possibility the Department has not met the test necessary when circumstantial evidence is the basis for establishing guilt.

Looking at the other side of this coin the Department has not met its burden of proof going forward either. There are two levels of knowledge that the Department could have established which would have been sufficient to prove the knowledge and intent necessary for guilt.

The first level is that the Respondent was an active participant in the embezzlement. That is, that he knowingly and consciously worked with Weinmeier and or Costa as part of their plan. Absolutely no evidence was presented which could establish that level of participation.

The second level of knowledge was that he gleaned over time that the checks he was receiving were fraudulent but he continued to accept them in any event. This, it

¹⁰ The Department basically indicated that it did not want to inconvenience Sarabella (T 82). With regard to the statement allegedly made by Weinmeier, to Sarabella, Noto testified that he was not present when it was made and did not know what it was about or what it meant.

seemed, was the level of participation the Department was attempting to prove. As the discussion above indicates the Respondent exercised some level of due diligence to determine that the people in authority at Sage knew he was doing business with them. It is hard to image that he could have done more because any attempt to reach the two actual owners of Sage would have had to go through Costa and Weinmeier who screened phone calls. Then there were the checks themselves which were approved without question by the bank and by Sage itself until November 2007 when Noto finally looked at his books and records.

This Court is amply aware that a criminal case is still pending against this Respondent and this Court has no way of knowing what additional evidence the district attorney might or might not have to present in that criminal case. Based on the evidence presented at this proceeding the Respondent is found Not Guilty of Specification Nos. 1, 2 and 3.

Specification No. 4 charges that the Respondent on or about September 3, 2006 through September 3, 2007, did wrongfully engage in off-duty employment without permission or authority to do so.

The Respondent has admitted engaging in his baseball card business during this period of time and both the testimony of Molina and the documentary evidence indicates that he had no permission for this period of time. The Respondent is found Guilty of this specification.

Specification No. 5 charges that on or about November 23, 2007 the Respondent submitted an off-duty employment application in which he indicated that he had no proprietary interest in the baseball card business when in fact he did.

As previously discussed this charge has been established. Indeed the Respondent offered into evidence his earlier application form in which the same misstatement can be found.

The Respondent is found Guilty of Specification No. 5.

Specification No. 6 charges that the Respondent failed to follow a directive given to him, by Captain Eamon Deery on January 17, 2008 requiring him to turn over all of his firearms, rifles, and shotguns.

It is unquestioned that the Respondent turned his service and off-duty firearms. Captain Deery was not absolutely certain he told the Respondent to turn over rifles and shotguns. It was noted that the so called Ten Card on which members are required to list firearms does not include rifles and shotguns but only pistols and revolvers. Similarly a review of the Patrol Guide §206.10 and §206.17, involving modification of a member and removal of firearms, does not refer to rifles and or shotguns but only to pistols and revolvers.

On questioning by the Court it was learned that the Respondent retained three shotguns and three rifles after he was modified.

Deery testified that he was 98% certain that he ordered the Respondent to turn over rifles and shotguns and the Court accepts this statement as credible evidence that he did.

Responsibility on this topic also rests with the Respondent. The Patrol Guide is just that, a guide. The foreword to the Patrol Guide, § 200-01, provides: "Members are also required to conform their conduct with their oath of office, and to the mission, values, strategies, objectives, policies, procedures and legal requirements of the Police

Department. All members of the Department will be accountable for their actions and should maintain the highest professional Standards.”

When a member is modified, the obvious objective is to remove any and all weapons from that member—to disarm that officer. The Respondent, a sergeant, should have turned over his rifles and shotguns even if they were not specifically requested. At the very minimum he should have brought their existence to the attention of Captain Deery and inquired as to whether he was required to turn them over.

The Respondent is found Guilty of Specification No. 6.

Specification No. 7 relates to the e-mail the Respondent received from Weinmeier on November 9, 2007 and alleges that “after receiving electronically communicated evidence relevant to an open criminal investigation, did fail to immediately provide the Department with said electronically communicated evidence, as required.” The specification references Patrol Guide § 203-10 – Page 1, Paragraph 5, the general section that addresses conduct prejudicial.

The Court had initially thought that this charge involved a failure to notify IAB of an allegation of corruption against himself which the Respondent would have been obligated to report under Patrol Guide 207-21. That section has not been charged but for sake of completeness the Court will in any event review that possibility.

The Respondent viewed himself as a victim and so did the original investigating officers from the 120 Precinct Detective Squad. Looked at in this light on November 9, 2007 when he received this e-mail it was not an allegation against the Respondent but a statement by someone who was about to be arrested for a crime. It was potential evidence against Weinmeier not evidence against the Respondent, except perhaps when

looked at with the wisdom of hindsight. There is no failure to turn over this computer print-out over under that theory.

Given the Department has charged the alleged failure to turn this material over as "conduct prejudicial" it would appear that it is alleged that he did not turn over evidence against Weinmeier. But the Respondent did print-out this e-mail and turned that print out over voluntarily when evidence was collected.

Sprague said he did not ask the Respondent for evidence and it would seem that there was an abundance of evidence against Weinmeier who left a significant trail of checks, among them, checks to himself and family members. It is therefore not surprising that Sprague never asked the Respondent to turn over records. In short the Respondent preserved the evidence and turned it over when asked.

The Respondent is found Not Guilty of Specification No. 7.

Specification No. 8 charges that the Respondent on or about and between November 9, 2007 and January 17, 2008 "improperly utilized a Department computer to ascertain information about a criminal complaint for his personal use."

It is alleged that on one instance the Respondent made an inquiry to find out what was happening with Weinmeier's case. The Respondent admitted that in the period after Weinmeier was arrested and before he was considered a defendant he used a Department computer to find out about Weinmeier's case.

The Respondent is found Guilty of Specification No. 8.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on June 30, 1995. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found guilty of disobeying an order in that he failed to turn over his rifles and shotguns when he was placed on modified duty. He was also found guilty of failing to obtain permission to engage in off-duty employment from September 3, 2006 to September 3, 2007, with failing to indicate his proprietary interest in his baseball card and memorabilia business, and with improperly utilizing a Department computer.

Based on the serious nature of these charges the Court recommends a penalty consisting of the 39 pre-trial suspension days already served and an additional 6 vacation days for a total penalty of 45 days.

Respectfully submitted,



Martin G. Karopkin
Deputy Commissioner – Trials

APPROVED



APR 06 2009
RAYMOND W. KELLY
POLICE COMMISSIONER